

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2339

IN THE MATTER OF:

Served June 4, 1982

Investigation of Alleged Over-)
charges By and Order to Show Cause)
Directed Against ISAAC SOWEMIMO)

Case No. MP-82-02

By Order Nos. 2316 and 2317, served February 24, and March 1, 1982, this proceeding was instituted to investigate whether respondent Isaac Sowemimo had demanded and collected fares in excess of those prescribed for taxicab transportation between two signatories to the Washington Metropolitan Area Transit Regulation Compact in violation of Title II, Article XII, Sections 1(c) and 8 of the Compact and orders issued thereunder. 1/

On March 23, 1982, a public hearing was held pursuant to notice. Respondent appeared pro se, cross-examined the witnesses against him, and presented testimony on his own behalf. 2/ Mr. Sowemimo stated that he did not seek to obtain the services of an attorney.

William R. deLashmutt testified that on May 31, 1981, he was transported by taxicab from the main terminal of Washington National Airport (Gravelly Point, Va.) to 6621 Michaels Drive, Bethesda, Md. The driver followed a route dictated by Mr. deLashmutt. Upon arrival, the driver stated that the trip distance was 26 miles and demanded a fare of \$33.80, which fare was paid by Mr. deLashmutt over his objection. Mr. deLashmutt then retraced the route, found that the trip measured 16 miles (according to his odometer), and filed the letter of complaint contained in Exhibit 1 (I.C. No. 4857). Mr. deLashmutt

1/ WMATC Order Nos. 67, 91, 2067, 2080 and 2213, cited fully in Order No. 2316.

2/ It is specifically noted that respondent was advised on several occasions by the Commission and its staff and by the United States District Court for the District of Columbia of his right to counsel.

affirmed the facts stated in that letter, including the taxicab company name and number and the tag number. Public documents show respondent as the owner and operator of the taxicab. No portion of the \$33.80 has been refunded to this witness. On cross-examination, respondent contended that "... the amount I charged you was on my odometer."

C. C. Fenn was transported by taxicab on May 6, 1981, from National Airport to 4000 Cathedral Avenue, N. W., Washington, D. C. She left the choice of route to the driver, and was charged \$11.95. Mrs. Fenn wrote a letter of complaint about this charge which is contained in Exhibit No. 2 (I.C. No. 4799) and affirmed the facts set forth in that letter including her identification of respondent's taxicab. Mrs. Fenn complained that the fare was too high, but the driver told her that "... they always charge a little more at the rush hour." 3/ Subsequently, Mrs. Fenn received a refund of \$4.10.

Robert Witherspoon testified that on December 18, 1981, he was transported by taxicab from National Airport to 2101 Connecticut Avenue, N. W., Washington, D. C., and that respondent, who was driving the cab, charged him \$11. Respondent chose the route to be followed. Mr. Witherspoon's letter of complaint, which he affirmed at the hearing, is contained in Exhibit No. 5 (I.C. No. 5074). Despite looking all around the interior of the cab, Mr. Witherspoon could not find the driver's public vehicle license and concluded that the license was not on display.

On April 11, 1981, Elizabeth Susan Weems, while accompanied by a friend, was transported by taxicab from National Airport to 116 North Carolina Avenue, S. E., Washington, D. C. Ms. Weems testified that the driver went considerably out of the way during the trip and had to double back to reach the correct destination. Ms. Weems identified and affirmed her letter of complaint about this incident and the receipt furnished by the driver for \$9.15. These items are a part of Exhibit No. 8 (I.C. No. 4763). Ms. Weems testified that she and her friend entered and departed the cab together and spoke to one another throughout the drive; she opined that "... it was eminently clear that we were travelling together." On cross-examination, Ms. Weems denied directing the routing from the airport until the driver passed the correct exit to her destination.

Hortense Kerr testified that, on April 26, 1981, she was transported by taxicab from National Airport to 1836 Metzert Road, Adelphi, Md. In Ms. Kerr's opinion, the driver followed a direct route

3/ Rush-hour surcharges are inapplicable to interstate taxicab trips.

after dropping off another rider with Ms. Kerr's permission. The driver demanded and collected \$17.40 as the fare for this trip. When Ms. Kerr protested that \$17.40 was too much, the driver became "rather belligerent", "abusive and rather mean". Ms. Kerr affirmed the facts stated in her letter of complaint and the corresponding receipt which are contained in Exhibit No. 10 (I.C. No. 4905).

On March 8, 1981, Margaret Kahliff was transported by taxicab from National Airport to 4200 Massachusetts Avenue, N. W., Washington, D. C. Ms. Kahliff was the first passenger in the cab, but, despite her objection, the driver accepted a second fare destined to the Quality Inn-Capital Hill located in the 400 block of New Jersey Avenue, N. W., Washington, D. C. Ms. Kahliff identified respondent as the driver and affirmed the facts stated in her letter of complaint which is a part of Exhibit No. 3 (I.C. No. 4717). When Ms. Kahliff disputed the fare demanded (\$13.50), respondent became "very intimidating" and threatened to leave with the witness's luggage. Respondent finally accepted \$10. Subsequently, Ms. Kahliff received a refund of \$1.40.

On May 9, 1981, Mark L. Davidson was transported by taxicab from National Airport to 2127 California Street, N. W., Washington, D. C. Mr. Davidson identified respondent as the driver of the cab and stated that respondent demanded and collected \$9.95 as the fare for that trip. Mr. Davidson affirmed the facts set forth in his letter of complaint which is a part of Exhibit No. 13 (I.C. No. 4794), and noted that he eventually received a refund of \$2.70. When Mr. Davidson argued that \$9.95 was too much and refused to pay more than the correct fare, ". . . Mr. Sowemimo grabbed my bag, my suit case that I had with me, an overnight bag, and we struggled over the bag, and he finally pried it from my grip and secreted it in his trunk and locked it there. * * * Mr. Sowemimo, during the course of the struggle, had grabbed me about the neck. . . ." 4/

On February 2, 1982, Alan L. Farkas was transported by taxicab from National Airport to 5400 Huntington Parkway, Bethesda, Md. Mr. Farkas identified the respondent as the driver of that taxicab and testified that he (Mr. Farkas) directed the route to be followed. Upon arrival, Mr. Sowemimo demanded a fare of \$18.60. Mr. Farkas protested the fare and paid \$18.60 (which respondent said was the fare for 17

4/ As a result of withholding Mr. Davidson's luggage and assaulting his person, a charge of improper conduct against respondent was sustained by the District of Columbia Hacker's License and Appeal Board on February 25, 1982. Respondent's license was suspended for a period of 45 days.

miles) only after inspecting Mr. Sowemimo's license and obtaining a receipt. Mr. Farkas verified a copy of his letter of complaint and the receipt which are contained in Exhibit No. 20 (I.C. No. 6052). No refund of the fare charged has been made.

Anne D. Snodgrass was transported by taxicab on January 4, 1982, from National Airport to 2804 - 34th Street, N. W., Washington, D. C. Ms. Snodgrass has made this trip a number of times and directed the routing thereof. Upon arrival, the driver demanded \$10.10 which Ms. Snodgrass paid under protest. Ms. Snodgrass verified her letter of complaint and the receipt obtained from respondent which are contained in Exhibit No. 19 (I.C. No. 6040). Ms. Snodgrass testified that Mr. Sowemimo "... had been very rude and short with me."

Maurice J. Harmon testified that he is the rate supervisor for WMATC. He receives and investigates complaints about overcharges on interstate taxicab trips. Overall, Mr. Harmon has approximately 23 years of experience in various positions dealing with taxicab rates and regulations prescribed by this Commission or the District of Columbia. Mr. Harmon qualifies as an expert witness in these areas of inquiry.

When Mr. Harmon receives a letter asserting an interstate taxicab overcharge, 5/ he checks to see if the trip was subject to WMATC jurisdiction, if the fare charged was correct, and makes written notes regarding his investigations. Mr. Harmon calculates the mileage for each trip by use of a calibrated map measuring wheel and fully explained how the wheel is used, how his calculations are made and what he had done to assure the accuracy of the wheel. 6/ After determining the pertinent mileage, Mr. Harmon applies the rates adopted by this Commission to determine the correct fare. Next, Mr. Harmon attempts to contact the taxicab driver and obtain a refund where an overcharge is found to have occurred.

Mr. Harmon testified about 19 overcharge complaints received against Mr. Sowemimo. His testimony regarding the correct mileage (adjusted upward to the next half mile), the fare demanded and the correct fare are summarized in tabular form as follows:

5/ Approximately 450 such letters were received in the 12 months preceding the hearing in this case.

6/ Respondent was offered an opportunity to test the wheel and declined.

<u>Ex. #</u>	<u>Complainant</u>	<u>Miles</u>	<u>Fare Demanded</u>	<u>Fare Paid</u>	<u>Correct Fare</u>
1	Mr. deLashmutt	16.0	\$33.80	\$33.80	\$15.50 <u>7/</u>
2	Mrs. Fenn	7.5	11.95	11.95	7.85 <u>7/</u>
3	Ms. Kahliff	8.0	13.50	10.00	7.10
5	Mr. Witherspoon	6.5	11.00	11.00	6.95 <u>7/</u>
6	Mr. Taylor	5.5	10.75	10.75	6.35 <u>8/</u>
7	Mr. McHigh	4.0	10.75	10.75	5.15 <u>8/</u>
8	Ms. Weems	5.0	9.15	9.15	5.95 <u>8/</u>
9	Mr. Smith	5.5	9.20	9.20	6.05 <u>7/</u>
10	Ms. Kerr	13.0	17.40	17.40	12.80 <u>7/</u>
11	Ms. Pohlman	5.0	10.00	10.00	5.60 <u>7/</u>
12	Mr. Maloney	7.5	10.85	10.85	7.85 <u>7/</u>
13	Mr. Davidson	6.0	9.95	9.95	7.25 <u>8/</u>
14	Mrs. Guyther	7.5	9.20	9.20	7.85 <u>7/</u>
15	Mr. Herman	16.0	23.40	23.40	15.50 <u>7/</u>
16	Mr. Meisel	22.5	35.00	35.00	24.35 <u>9/</u>
17	Ms. Hinerfeld	5.0	13.10	13.10	6.35 <u>10/</u>
18	Miss O'Connell	6.0	12.00	12.00	7.25 <u>8/</u>
19	Ms. Snodgrass	7.5	10.10	10.10	7.85 <u>7/</u>
20	Mr. Farkas	13.0	18.60	18.60	12.80 <u>7/</u>

Total fares paid exceed correct fares by 55.5 percent.

Respondent objected to the admission of all exhibits. In only one case (Exhibit No. 12) did he deny being the driver of the taxicab. With respect to the incident, Mr. Sowemimo alleged that he had rented his cab to a friend, but could not recall the "friend's" name, whether the "friend" has a hacker's license or other significant details regarding the alleged rental. Such self-serving testimony is incredible. In any event, District of Columbia law clearly places residual responsibility for any breach of duty by the permittee on the owner or primary operator of the taxicab. 11/ We find that all exhibits were properly admitted into evidence.

7/ Includes 50-cent airport gate fee.

8/ Includes 50-cent airport gate fee and 75-cent extra passenger fee.

9/ Includes 50-cent airport gate fee and \$3 extra passengers (4) fees.

10/ Includes 50-cent airport gate fee and 75-cent waiting charge.

11/ Cf. Title 14, D.C.R.R. Section 350.2.

Mr. Harmon also testified about various other regulatory violations related to the above-described interstate fares. Withholding a passenger's luggage against his will, as happened to Ms. Penn and Mr. Davidson, may constitute larceny as opined by Mr. Harmon; it certainly constitutes conduct detrimental to the careful and convenient transportation of passengers 12/ and adversely impacts upon the right of taxicab passengers to insist on paying only the correct WMATC-established fare.

On at least one occasion (the transportation of Mr. Witherspoon) respondent's license and identification card were not on display. 13/ Certain receipts were not correctly completed as required by Title 14, D.C.R.R. Section 305.13 and WMATC Order No. 91. 14/ On several occasions, Mr. Sowemimo failed to contact Mr. Harmon pursuant to written directions and failed to produce manifests for inspection as directed. 15/

Such manifests as were produced disclosed several violations. A manifest for May 6, 1981, produced on June 2, 1981, differed significantly from what was purportedly the same manifest produced on March 19, 1982. Of the approximately 355 days for which manifests were to be produced, only those covering 45 days were forthcoming. Of 139 interstate trips reflected on these manifests: 129 showed no time of pickup or discharge; 75 did not show the fare charged; and 55 indicate more mileage than the actual trip would involve if the customary or most direct route was followed as required. 16/

Mr. Harmon further testified that on June 23, 1981, Mr. Sowemimo was counseled by the staff of the Commission regarding the correct way to calculate interstate fares. The ". . . regulations were explained to him, the rates were explained to him, and he indicated he knew them on his own." At that time, Mr. Sowemimo was warned that future transgressions would result in formal charges being brought against him.

12/ See Title 14, D.C.R.R. Section 350.3 and WMATC Order Nos. 67 and 91.

13/ See Title 14, D.C.R.R. Sections 340.1 and 340.2 and WMATC Order Nos. 67 and 91.

14/ Cf. Exhibit No. 9.

15/ See Title 14, D.C.R.R. Section 355.1 and WMATC Order Nos. 67 and 91.

16/ See Title 14, D.C.R.R. Section 345.8 and WMATC Order Nos. 67 and 91.

As noted above, Mr. Sowemimo objected to all exhibits. He stated 17/ that no overcharges occurred because: for the trips referenced in Exhibits Nos. 1-3, 5, 6, 9, 10, 13-17, 19 and 20, he charged only for the mileage shown on his odometer; for the trips referenced in Exhibit Nos. 7 and 18, the passengers were separate fares; for the trips referenced in Exhibit Nos. 8 and 11 the routing of the trip was directed by the passenger; and as noted above, for the trip referenced in Exhibit No. 12, a "friend" was operating the taxicab.

Despite not questioning the method or accuracy of Mr. Harmon's mileage measurements, respondent opined that his odometer mileages consistently differed. 18/ Respondent avered that his odometer has been checked and is functioning properly.

On cross-examination, Mr. Sowemimo claimed that he records the beginning and ending odometer readings for each trip on his manifest. The manifests submitted, however, completely belie that statement. On one trip, 19/ calculated by Mr. Harmon (using the map measuring wheel) and by Mr. deLashmutt (using the odometer of his automobile) to be 16 miles, respondent alleged that he properly charged for a 26-mile trip. Respondent later "corrected" his testimony to agree with his manifest which indicated the trip to be 35 miles. 20/ Respondent did not know the interstate rate to be applied after the first mile of a trip.

The Compact, Title II, Article XII, Section 8, confers on the Commission the power ". . . to prescribe reasonable rates for transportation by taxicab only between a point in the jurisdiction of one signatory party and a point in the jurisdiction of another signatory party provided both points are within the Metropolitan District." Title II, Article XII, Section 15 states that "[t]he

17/ Mr. Sowemimo's objections were later adopted by him as sworn testimony.

18/ WMATC Order No. 91 requires that odometers be accurate within a tolerance of 10 percent.

19/ See the testimony of Mr. deLashmutt, supra, pp. 1 and 2.

20/ To illustrate, a 35-mile trip (correct fare \$32.10) could be from National Airport to Bethesda, Md., then around the Washington Beltway to the Capitol Centre in Landover, Md.

Commission shall have power to perform any and all acts and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act." Section 21 of the same Article continues in force the rules and regulations of this Commission's predecessors ". . . unless and until otherwise provided by [this] Commission in the exercise of its powers under this Act."

In its first review of taxicab rates, this Commission specifically adopted for taxicabs licensed and domiciled in the District of Columbia, all ". . . regulations . . . prescribed and approved by the District of Columbia Public Utilities [now Public Service] Commission." 21/ Subsequently, in response to requests from members of the taxicab industry, the Commission adopted additional and supplemental regulations for D. C. taxicabs. 22/ To the extent that the regulations adopted in Order No. 91 are inapplicable, the D. C. regulations adopted by Order No. 67 continue in force. 23/ Naturally, those D. C. regulations which have no relationship to rates and fares and the collection thereof would be beyond the scope of this Commission's enforcement powers.

The Commission finds, based on the testimony of the complainants and Mr. Harmon and respondent's admissions, that Isaac Sowemimo was the driver on each complaint and that at all times pertinent to this proceeding Mr. Sowemimo was a taxicab operator licensed by the District of Columbia. We further find that the mileage calculations made by Mr. Harmon represent the correct chargeable mileage for their respective trips. 24/ While there may be some variance between the measurements made by the map measuring wheel and Mr. Sowemimo's odometer, these variances would not exceed the 10 percent tolerance factor prescribed in Order No. 91. Thus, we further find that respondent unlawfully overcharged each complainant where the only defense asserted is a mileage discrepancy.

21/ Order No. 67, served October 9, 1961, p.4.

22/ See Order No. 91, served November 15, 1961.

23/ The D. C. regulations are found in 14 D.C.C.R., Charter III.

24/ Where the evidence indicates a passenger-dictated route, that route was used (in lieu, if necessary, of the customary or most direct route) to determine chargeable mileage.

We further find that respondent is an experienced taxicab driver charged by law with knowledge of the regulations pertaining to taxicabs and taxicab drivers licensed by the District of Columbia. A close reading of respondent's testimony clearly reveals that he can make careful distinctions among those regulations. The acts complained of were performed by Mr. Sowemimo knowingly and wilfully. Not only did Mr. Sowemimo know (at least constructively) the appropriate regulations, his departures therefrom were clearly intentional or marked by a careless disregard for whether he had the right so to act. 25/

We further find, based on respondent's own admission that two friends were travelling together, that Mr. Sowemimo knew, or should have known, that a party fare was applicable as prescribed in section (f) of Order No. 91 in connection with the complaint filed by Miss O'Connell. We further find that Mr. Sowemimo overcharged Mr. Taylor and Ms. Lotto. Assuming, arguendo, that application of separate fares, rather than a party fare, may have seemed appropriate, the correct total charge would have been \$8.40, not \$10.75. 26/ We further find that the evidence of record is insufficient to overcome Mr. Sowemimo's testimony that Ms. Pohlman directed the route to be travelled and the complaint by her is dismissed. (Ms. Pohlman, of course, did not testify.)

All conflicts in testimony are resolved against respondent. It is clear that respondent either did not bother to learn the rules prescribed for taxicab operators or did not bother to follow them. Respondent's verbal testimony is self-contradictory, at least one manifest has been altered and respondent's manifests contradict his oral testimony.

We further find that respondent has failed on at least one occasion to display his license and identification card and that he has issued incomplete receipts, thereby hampering the enforcement of the interstate rate structure prescribed by this Commission. We further find that respondent has engaged in unsafe and improper practices by assaulting one passenger and distraining passenger's luggage as methods of extorting unjustified interstate fares. Finally, we find that

25/ C.f. United States v. Illinois Central R. Co., 303 U.S. 239, 58 S.Ct. 533, 82 L.Ed. 773 (1938) and United States v. Murdock, 290 U.S. 389, 394, 54 S.Ct. 223, 78 L.Ed. 381, 384 (1933).

26/ Each 4 mile trip would have been \$4.20. Assuming separate fares, no gate fee or extra-passenger fee would have been applicable.

respondent failed to respond to a lawful request for the production of his manifests. 27/

Respondent has been counseled about the proper application of interstate rates and the need to observe Commission regulations. Under the circumstances, the Commission concludes that all remedies available to sanction Isaac Sowemimo for the above-described violation should be exercised.

One further comment is required. The Commission's records show that \$365.80 was expended for the transcript in this case while the initial assessment for expenses against respondent was only \$300. Pursuant to Title II, Article XII, Section 19 of the Compact, Isaac Sowemimo shall be assessed an additional \$65.80 to cover the balance of administrative costs to date. 28/

THEREFORE, IT IS ORDERED:

1. That respondent Isaac Sowemimo is hereby directed to cease and desist from engaging in the transportation of passengers by taxicab from one signatory to another within the confines of the Metropolitan District.

2. That respondent Isaac Sowemimo is hereby directed to cease and desist from displaying in any taxicab operated by him the rates prescribed by this Commission for the transportation of passengers by taxicab from one signatory to another within the confines of the Metropolitan District and is further directed to display conspicuously in lieu thereof a sign no smaller than four inches by six inches stating "This driver is forbidden to operate in interstate service by order of the Washington Metropolitan Area Transit Commission."

3. That the staff of the Commission is hereby directed to pursue in the United States District Court for the District of Columbia or other court of competent jurisdiction such civil actions as may be

27/ Such manifests as were produced came in response only to an action brought by the Commission in the United States District Court for the District of Columbia.

28/ As of April 30, 1982, none of the assessment had been paid. Pursuant to an Order entered on March 25, 1982, in Civil Action No. 82-0741, \$150 was to have been paid by April 30th. The balance of all sums owing is due on or before June 10, 1982.

appropriate to secure respondent's compliance with the mandates of this Order.

4. That the staff of the Commission is hereby directed to prosecute before the District of Columbia Hacker's Appeal Board the violations found herein with a view toward obtaining the revocation or suspension of respondent's taxicab driver's identification card and his public vehicle license.

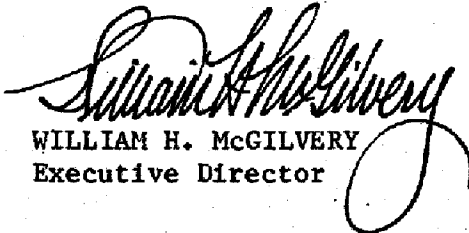
5. That the staff of the Commission is hereby directed to refer this file to the Corporation Counsel of the District of Columbia for prosecution under Title II, Article XII, Section 18(d) of the Compact or such other provisions of the law as the Corporation Counsel may deem pertinent.

6. That respondent Isaac Sowemimo is hereby assessed an additional \$65.80 and is directed to deliver said sum to the office of the Commission no later than 12 noon on June 10, 1982, as required by the above-referenced Order of the United States District Court for the District of Columbia.

7. That respondent Isaac Sowemimo make further restitution for the overcharges found herein by delivering to the office of the Commission no later than June 10, 1982, money orders payable as shown below:

<u>Payee</u>	<u>Amount</u>
William R. deLashmutt	\$18.30
Robert Witherspoon	4.05
Hortense R. Kerr	4.60
Augustine Guyther	1.35
Hamilton Herman	7.90
Joel S. Meisel	10.65
Ruth J. Hinerfeld	6.75
Terry Ann O'Connell	4.75
Anne D. Snodgrass	2.25
Alan L. Farkas	5.80

BY DIRECTION OF THE COMMISSION, COMMISSIONERS CLEMENT, SCHIFTER AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director